IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1224 of 1984

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATHAN SHAKURKHAN ABDULKHAN

Versus

JESWAL CHIMANLAL MANEKLAL

Appearance:

MR RN SHAH for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 25/02/2000

ORAL JUDGEMENT

1. This is a revision undesr section 29(2) of the Bombay Rent Act at the instance of the original tenant against whom the trial court had passed a decree for eviction on the ground of arrears of rent exceeding six months, and whose appeal was also dismissed by the lower

appellate court.

2. Before proceeding with the merits of the matter it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising under section 29(2) of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Others Vs. Patel Mohanlal Muljibhai [1998(2) GLH 736 = AIR 1998 SC 3325], while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai Vs. Saiyad Hohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

3. Both the courts below have recorded concurrent findings of fact to the effect that the tenant was in arrears of rent exceeding six months on the date of the statutory notice, and that he has not paid the rent regularly as directed by the trial court determining interim rent by order below Exh.15. It may be noted here that both the courts below have proceeded on the basis that this was a case covered by section 12(3)(b) of the Bombay Rent Act. For the moment I proceed on the basis that section 12(3)(b) of the said Act would apply. On the concurrent findings of fact recorded by the two courts below, learned counsel for the applicant-defendant tenant is unable to show as to how the findings of fact can possibly be said to be a perversity in law, or can possibly be said to be findings recorded on the basis of no evidence. In view of this situation I am bound to confirm the findings recorded by the two courts below.

4. However, there is another aspect of the matter which appears to have escaped the attention of both the courts, and which also militates against the applicant-tenant, and would justify a decree under section 12(3)(a) of the said Act.

5. The two courts below have failed to appreciate that section 12(3)(b) of the said Act applies only where section 12(3)(a) does not apply. Thus, it is first necessary to rule out the application of section 12(3)(a)

before applying the provisions of section 12(3)(b).

6. On the facts of the case there is no dispute that on the date of the statutory notice the tenant was in arrears of rent exceeding six months.

7. The two courts below appear to have proceeded on the basis that section 12(3)(a) would not apply and consequently section 12(3)(b) would apply because there was a dispute as to standard rent, so as to take the case outside the purview of section 12(3)(a).

8. It must first be clarified that the two judgements in question contain many typographical errors, and that there are errors in respect of the relevant dates and exhibit numbers. However, learned counsel for the applicant and this court have, by counter-checking the record (the brief) of the counsel for the applicant with the original record and proceedings and evidence of the trial court, ascertained the correct dates and the correct exhibit numbers. As a result of this verification it is found that although a ground has been raised in the memo of revision that an application had been filed for determination of standard rent by the defendant-tenant, there is absolutely no such application on record filed by the tenant within the meaning of section 11(1) of the said Act. It appears that learned counsel for the petitioner as also the two courts below went astray merely because the defendant had filed an application under section 11(4) for determination of interim rent. It cannot be overlooked that section 11(4) only follows section 11(1), and that the right conferred upon the tenant to apply for determination of interim rent arises only where a dispute as to standard rent has been raised, either under section 11(1) or by a contention raised by the tenant within one month of receipt of the statutory notice under section 12. On a complete verification of the record, it is found as a matter of fact that although the tenant had applied for determination of interim rent, there was absolutely no application filed for determination of standard rent under section 11(1) of the Act. The only other mode of raising a dispute as to standard rent would be by raising a contention (on the part of the defendant) in the reply to the statutory notice issued by the landlord.

9. On the facts of the case it is found (contrary to certain observations made in the judgements in question) that the only reply by the tenant to the statutory notice issued by the landlord (Exh.26) is at Exh.33, and this reply of the defendant is dated 2nd August 1979. This

reply, therefore, comes almost 7 months after the statutory notice of the landlord, and since this contention is not raised within 30 days of the receipt of the statutory notice, cannot possibly serve to take the case out of the purview of section 12(3)(a) of the Act.

10. There is a reference in the judgements in question that the tenant had replied to the statutory notice by his reply dated 2nd January 1979 and/or 2nd July 1979. No Exhibit number is mentioned in this regard. However, this appears to be either a typographical or a ministerial error on the part of the court inasmuch as, after due verification, learned counsel for the applicant and this court has found that no such reply is proved and exhibited on the record of the case. Thus, the only reply on the part of the defendant tenant which is proved and exhibited is at Exh.33, and which is admittedly dated 2nd August 1979.

11. Even otherwise after a careful perusal of Exh.33, learned counsel for the applicant concedes that the said reply does not raise any dispute as to standard rent. Thus, even on this fact, the application of section 12(3)(a) cannot be excluded.

12. Thus, in the premises aforesaid, the decree for eviction passed by the trial court and confirmed by the lower appellate court is required to be sustained and the present revision is required to be rejected. Accordingly this revision is dismissed. Rule is discharged with no order as to costs. Interim relief stands vacated.

13. At this stage learned counsel for the petitioner seeks time to vacate the suit premises in question. On the facts and circumstances of the case the applicant tenant is granted time to vacate the suit premises upto 30th June 2000, subject to the usual undertaking being filed in this court within 30 days from today. It is clarified that there shall be no extension of time for the purpose of filing the undertaking. If the undertaking is not filed by due date, the time granted herein for the purpose of vacating the premises shall not operate and the decree shall be come executable forthwith. D.S. permitted.

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